



DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of three petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. Electronic Mail: zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.

2. Facsimile: 202-693-9441.

3. Regular Mail or Hand Delivery: MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452, Attention: S. Aromie Noe, Acting Deputy Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), noe.song-ae.a@dol.gov (email), or 202-693-9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M-2021-002-C

Petitioner: Blue Mountain Energy, Inc., 3607 County Road #65, Rangely, Colorado (ZIP 81648)

Mine: Deserado Mine, MSHA ID No. 05-03505, located in Rio Blanco County, Colorado

Regulation Affected: 30 CFR 75.507-1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.507-1(a) *Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements*. Specifically, the petitioner is applying to

utilize the battery-powered CleanSpace Powered Respirator in the Deserado Mine in Colorado in return air outby the last open crosscut.

The petitioner states that:

- a) Blue Mountain Energy currently uses the 3M Airstream helmet to provide additional protection for its miners against exposure to respirable coal mine dust.
- b) For more than 40 years the 3M Airstream Headgear-Mounted Powered Air Purifying Respirator (PAPR) System has been used by many mine operators to help protect their workers. Recently 3M indicated they faced multiple key component supply disruptions for the Airstream product line, which made it difficult to provide acceptable supply service levels. Because of these issues, 3M discontinued the Airstream on or before June 1, 2020. 3M further announced that February 2020 was the final date to place an order for systems and components and that June 2020 was the final date to purchase Airstream components.
- c) Following that discontinuation, mines using the 3M Airstream do not have an MSHA-approved alternative PAPR to provide to miners.
- d) Currently there are no replacement of 3M PAPRs that meet MSHA standards for permissibility. Under 30 CFR, electronic equipment must be approved by MSHA to be used in underground mines with potentially explosive atmospheres.
- e) A benefit of using PAPRs is that they provide a constant flow of air inside the headtop or helmet, offering miners both respiratory protection and comfort in hot working environments.
- f) Another manufacturer offers an alternative product for other environments and applications – the CleanSpace EX Powered Respirator. However, the CleanSpace EX Powered Respirator is not MSHA-approved as permissible, and the manufacturer is not pursuing MSHA approval.
- g) The CleanSpace EX Powered Respirator is intrinsically safe and meets International

Electrotechnical Commission System for Certification to Standards

Relating to Equipment for Use in Explosive Atmospheres (IECEx) approval standards for quality assurance and protection.

- h) The product provides an equivalent level of respiratory protection in underground mining environments.

The petitioner proposes the following alternative method:

- a) The petitioner will use the CleanSpace EX Powered Respirator in return air outby the last open crosscut.
- b) The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512-2; the examination results shall be recorded weekly. Examination entries may be expunged after one year.
- c) The petitioner shall comply with 30 CFR 75.323.
- d) A qualified person as defined in 30 CFR 75.151 shall monitor methane for the subject area of the mine as required by the mandatory standards.
- e) All qualified persons and miners affected shall receive specific training on the terms and conditions of the Decision and Order before using the equipment in the affected area. A record of any training on this Decision and Order shall be kept and provided upon request by an Authorized Representative.
- f) Within 60 days of the Decision and Order issued by MSHA becoming final, the mine operator shall submit proposed revisions for its approved 30 CFR 75.370 mine ventilation plan and approved 30 CFR part 48 training plan to the Coal Mine Safety and Health District Manager. These proposed revisions shall specify how the operator will provide initial and refresher training in compliance with the terms and conditions stated in MSHA's Decision and Order. When training is conducted, a MSHA Certificate of Training (Form 5000-23) shall be completed. Comments shall be included on the

Certificate of Training indicating that the training was the use of non-permissible testing equipment.

- g) The mine operator shall be responsible for determining that all persons including contractors are using the equipment in accordance with MSHA's Decision and Order.
- h) The mine operator shall post this Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M-2021-003-C

Petitioner: Blue Mountain Energy, Inc., 3607 County Road #65, Rangely, Colorado (ZIP 81648)

Mine: Deserado Mine, MSHA ID No. 05-03505, located in Rio Blanco County, Colorado

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.500(d), as it relates to the use of an alternative method of respirable dust protection in the Deserado Mine in Colorado. Specifically, the petitioner is applying to use a battery powered respirable protection unit called CleanSpace EX Powered Respirator in or inby the last open crosscut.

The petitioner states that:

- a) Blue Mountain Energy currently uses the 3M Airstream helmet to provide additional protection for its miners against exposure to respirable coal mine dust.
- b) For more than 40 years the 3M Airstream Headgear-Mounted Powered Air Purifying Respirator (PAPR) System has been used by many mine operators to help protect their workers. Recently 3M indicated they faced multiple key component supply disruptions for the Airstream product line that created issues with providing acceptable supply

service levels. Because of these issues, 3M discontinued the Airstream on or before June 1, 2020. 3M further announced that February 2020 was the final date to place an order for systems and components and that June 2020 was the final date to purchase Airstream components.

- c) Following that discontinuation, mines using the 3M Airstream do not have an MSHA-approved alternative PAPR to provide to miners.
- d) Currently there are no 3M replacement PAPRs that meet MSHA standards for permissibility. Under 30 CFR, electronic equipment must be approved by MSHA to be used in underground mines with potentially explosive atmospheres.
- e) A benefit of using PAPRs is that they provide a constant flow of air inside the headtop or helmet, offering miners with both respiratory protection and comfort in hot working environments.
- f) Another manufacturer offers an alternative product for other environments and applications – the CleanSpace EX Powered Respirator. However, the CleanSpace EX Powered Respirator is not MSHA-approved as permissible, and the manufacturer, CleanSpace, is not pursuing MSHA approval.
- g) The CleanSpace EX Powered Respirator is intrinsically safe and meets International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres (IECEx) approval standards for quality assurance and protection.
- h) The product provides an equivalent level of respiratory protection in underground mining environments.

The petitioner proposes the following alternative method:

- a) The petitioner is applying to use the CleanSpace EX Powered Respirator in or inby the last open crosscut.

- b) The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512-2; the examination results shall be recorded weekly. Examination entries may be expunged after one year.
- c) The petitioner shall comply with 30 CFR 75.323.
- d) A qualified person as defined in 30 CFR 75.151 shall monitor methane for the subject area of the mine as required by the mandatory standards.
- e) All qualified persons and miners affected shall receive specific training on the terms and conditions of the Decision and Order before using the equipment in the affected area. A record of any training on this Decision and Order shall be kept and provided upon request by an Authorized Representative.
- f) Within 60 days of the Decision and Order issued by MSHA becoming final, the mine operator shall submit proposed revisions for its approved 30 CFR 75.370 mine ventilation plan and approved 30 CFR part 48 training plan to the Coal Mine Safety and Health District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in MSHA's Decision and Order. When training is conducted, a MSHA Certificate of Training (Form 5000-23) shall be completed. Comments shall be included on the Certificate of Training indicating that it was non-permissible testing equipment training.
- g) The mine operator is responsible for determining that all persons including contractors are using the equipment in accordance with MSHA's Decision and Order.
- h) The mine operator shall post this Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M-2021-004-C

Petitioner: Blue Mountain Energy, Inc., 3607 County Road #65, Rangely, Colorado (ZIP 81648)

Mine: Deserado Mine, MSHA ID No. 05-03505, located in Rio Blanco County, Colorado

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1002(a), as it relates to the use of an alternative method of respirable dust protection in the Deserado Mine in Colorado. Specifically, the petitioner is applying to use a battery powered respirable protection unit called CleanSpace EX Powered Respirator within 150 feet of pillar workings and longwall faces.

The petitioner states that:

- a) Blue Mountain Energy currently uses the 3M Airstream helmet to provide additional protection for its miners against exposure to respirable coal mine dust.
- b) For more than 40 years the 3M Airstream Headgear-Mounted Powered Air Purifying Respirator (PAPR) System has been used by many mine operators to help protect their workers. Recently 3M indicated they faced multiple key component supply disruptions for the Airstream product line that created issues with providing acceptable supply service levels. Because of these issues, 3M discontinued the Airstream on or before June 1, 2020. 3M further announced that February 2020 was the final date to place an order for systems and components and that June 2020 was the final date to purchase Airstream components.
- c) Following that discontinuation, mines using the 3M Airstream do not have an MSHA-approved alternative PAPR to provide to miners.
- d) Currently there are no replacement 3M PAPRs that meet MSHA standards for permissibility. Under 30 CFR, electronic equipment must be approved by MSHA to be used in underground mines with potentially explosive atmospheres.

- e) A benefit of using PAPRs is that they provide a constant flow of air inside the headtop or helmet, offering miners with both respiratory protection and comfort in hot working environments.
- f) Another manufacturer offers an alternative product for other environments and applications – the CleanSpace EX Powered Respirator. However, the CleanSpace EX Power Respirator is not MSHA-approved as permissible, and the manufacturer, CleanSpace, is not pursuing MSHA approval.
- g) The CleanSpace EX Powered Respirator is intrinsically safe and meets International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres (IECEx) approval standards for quality assurance and protection.
- h) The product provides an equivalent level of respiratory protection in underground mining environments.

The petitioner proposes the following alternative method:

- a) The petitioner is applying to use the CleanSpace EX Powered Respirator within 150 feet of pillar workings and longwall faces.
- b) The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512-2; the examination results shall be recorded weekly. Examination entries may be expunged after one year.
- c) The petitioner shall comply with 30 CFR 75.323.
- d) A qualified person as defined in 30 CFR 75.151 shall monitor methane for the subject area of the mine as required by the mandatory standards.
- e) All qualified persons and miners affected shall receive specific training on the terms and conditions of this Decision and Order before using the equipment in the affected area. A record of any training on this Decision and Order shall be kept and provided upon request by an Authorized Representative.

- f) Within 60 days of the Decision and Order issued by MSHA becoming final, the mine operator shall submit proposed revisions for its approved 30 CFR 75.370 mine ventilation plan and approved 30 CFR part 48 training plan to the Coal Mine Safety and Health District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in MSHA's Decision and Order. When training is conducted, a MSHA Certificate of Training (Form 5000-23) shall be completed. Comments shall be included on the Certificate of Training indicating that it was non-permissible testing equipment training.
- g) The mine operator is responsible for determining that all persons including contractors are using the equipment in accordance with MSHA's Decision and Order.
- h) The mine operator shall post this Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Acting Deputy Director,

Office of Standards, Regulations, and Variances.

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